

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**
Norfolk Division

HENRY H. ESTES, III, #312666,

Petitioner,

v.

ACTION NO.
2:05cv491

GENE M. JOHNSON, Director of the
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to petitioner's convictions in York County Circuit Court of three counts of robbery, four counts of use of a firearm, and carjacking, as a result of which he was sentenced to serve eighteen years years in the Virginia penal system.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. Report of the Magistrate Judge was filed on May 16, 2006, recommending dismissal of the petition. By copy of the report, each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. On May 31, 2006, the Court received Petitioner's Objections to the Report and Recommendation.

The Court, having reviewed the record and examined the objections filed by the petitioner to the United States Magistrate Judge's Report, and having made de novo findings with respect to

the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the Report of the United States Magistrate Judge filed May 16, 2006. It is, therefore, ORDERED that the petition for writ of habeas corpus is DENIED and the respondent's motion to dismiss is GRANTED.

To the extent the petition is based on Grounds (a), (b), (c), (d), (e), and (g), it is DENIED because they were previously adjudicated by the Virginia Supreme Court on the merits and none of the statutory exceptions apply that would allow this Court to review the claim on the merits. To the extent the petition is based on Ground (f) it is DENIED because it was procedurally barred from review in the state courts and thus, may not now be considered in this federal Court. It is further ORDERED that judgment be entered in favor of the respondent.

Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

Petitioner is hereby notified that he may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within 30 days from the date of entry of such judgment.

The Clerk shall mail a copy of this Final Order to all counsel of record.

/s/ Jerome B. Friedman

UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

June 26, 2006